2001

Jeannie V. Hamilton v. Robert Earl Hamilton, George Poulsen, and Mrs. Geroge Poulsen : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

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JEANNIE V. HAMILTON,

Plaintiff,
Appellant,

vs.

ROBERT EARL HAMILTON, GEORGE POULSEN, and MRS. GEORGE POULSEN,

Defendants,
Respondents.

Case No. 14456

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BRIEF OF APPELLANT

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AN APPEAL FROM THE JUDGMENT OF THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT IN AND FOR MILLARD COUNTY, STATE OF UTAH.

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JEANNIE V. HAMILTON, Plaintiff-Appellant, vs. ROBERT EARL HAMILTON, GEORGE POULSEN, and MRS. GEORGE POULSEN, Defendants-Respondents.	:	Case No.14456

BRIEF OF APPELLANT

NATURE OF CASE

Appellant brought this action seeking a decree quieting claims of respondents to either 1) a 1/2 undivided interest in the subject real property, or 2) an undivided 1/3 interest in the subject real property.

DISPOSITION IN LOWER COURT

This matter was submitted to the Court by both parties on Motions for Summary Judgment with Depositions and Transcripts of Trial submitted as Affidavits. The District Court for the Fifth Judicial District in Millard County, the Honorable J. Harlan Burns presiding, entered its judgment decreeing respondents, George Poulsen, to be the owner of the subject real property and quieted title

against the claims of the appellant and granted respondent, George Poulsen, his costs.

RELIEF SOUGHT ON APPEAL

Appellant seeks an order of this Court vacating the judgment rendered by the trial court and remanding the case for further proceedings.

STATEMENT OF FACTS

The appellant was married to the defendant, Robert Earl Hamilton in November of 1964 in Las Vegas, Nevada. (T [1975] 3:18) (D 3:16). From approximately October, 1965 through April, 1968, the Hamiltons resided in California. (D 3:17-20).

On November 22, 1967 (T [1973] 8:8) the property in issue was purchased by defendant's (Robert Earl Hamilton) father, to-wit: Mr. A. V. Hamilton, for the purchase price of $11,500.00 (T]1973] 8:4) in the name of his son, Robert Earl Hamilton, as and for the benefit of defendant's Robert Earl Hamilton, family. (T [1973] 11:5-14).

In the Spring of 1968 the Hamilton family moved from California to Millard County, Utah (T [1973] 4:11-15) where they resided on the subject real property for approximately 13 months until the appellant returned to California in May of 1969. (T [1973] 4:16-20).

In Civil No. 5843 in Millard County, (T[1969]) the appellant pursued a divorce action against the defendant, Robert Earl Hamilton. The Complaint in said action was filed

on May 28, 1969, (T [1975] 3:18-19) and the hearing on the case was held before the Honorable James P. McCune on December 8, 1969, (T [1969]; T [1975] 3:20-21). The Court found that the appellant was entitled to an interlocutory decree of divorce and orally granted such decree of divorce to her (T [1969] 32:9-16). The Court stated further that the decree would be final in all respects except as to the real property, including the water stock and equipment that goes with the farm itself (T [1975] 4:9-12 and T [1969] 38:25-30). The actual interlocutory decree of divorce was not signed and filed by Judge McCune until April 16, 1970, (T [1975] 5:11-14) which decree purported to require that the real property here involved and including other real property owned by the parties and 50 shares of water "should remain in joint ownership as tenants in common until the Court, by further Order, directs distribution or division of said property." (T [1975] 5:19-29).

On March 13, 1970, (D 3:17-19) during the time the final division of the real property was pending, the defendant, Robert Earl Hamilton, representing himself to be "a single man". (D 6:18-19, 10:17-21) conveyed by Warranty Deed to George J. Poulsen the real property involved in this litigation (T [1975] 4:22-25). The Warranty Deed was duly acknowledged by Robert E. Hamilton as a single man before Rodney Adams at Fillmore, Utah and was recorded in the office of the Millard County Recorder's Office on March

31, 1970 in Book 77 at page 519 (T [1975] 5 : 15 - 16). Since that time the respondent George Poulsen has held title to and has claimed possession of said property.

ARGUMENT

I

THE APPELLANT IS ENTITLED TO AN UNDIVIDED 1/2 INTEREST IN THE REAL PROPERTY SOLD BY THE DEFENDANT, ROBERT EARL HAMILTON, AS A SINGLE MAN, TO RESPONDENTS, POULSENS; OR IN THE ALTERNATIVE, THE APPELLANT IS ENTITLED TO A 1/3 INTEREST IN THE SUBJECT REAL PROPERTY.

A. At the time of the sale of the subject real property, the appellant was entitled to a 1/3 statutory interest.

The statement of facts satisfy the requirements of Section 74-4-3, Utah Code Annotated (1953 as amended) creating in appellant, as wife, an inchoate statute interest in one-third of the subject property. Said interest attached to the property when acquired, and was still attached to the property in March, 1970, when Robert Earl Hamilton deeded the property to the respondents, Poulsens. There is no evidence of any relinquishment of this statutory interest by the appellant, and no factual issue has been raised in this regard.

The legal effect of the conveyance of the property by Robert Hamilton to the Poulsens in March, 1970, was to transfer the interest which he had, but subject to the statutory interest of the wife. As stated in In Re Madsen's

Estate, 123 U. 327, 259 P. 2d (1953), at page 603:

> It (the wife's dower right) does not affect the seisin of the husband's grantee. He acquires the title that vested in the husband by the deed. The grantee has the legal title encumbered by the dower unless the wife has by proper written instrument freed the title of the encumbrance.

Even though the trial court found that the Poulsens purchased without actual notice of appellant's statutory interest, this did not give them the status of bona fide purchasers for value or free the property from her claim. Nor are the wife's rights affected by the husband's representations that he is unmarried. This principle was affirmed in the case of Hilton v. Sloan, 37 U. 359, 108 P. 689 (1910) at page 696. In that case, estoppel by the wife was found to be present, which defeated her dower claim. There is no evidence of estoppel in our case.

Thus, the law is clear on the facts that at any point in time between the conveyance (March 31, 1970) and the signing of the Interlocutory Divorce Decree (April 14, 1970) any title to the property held by the Poulsens was subject to the appellant's statutory interest, whether the Poulsens knew of it or not.

B. There exists a correlation between the wife's statutory interest and a property division which takes place at the time of divorce.

It may be conceded that as a general rule a divorce terminates the wife's statutory interest. 25 Am Jur 2d 192, Dower and Curtesy § 141. However, under Section 30-3-5,

Utah Code Annotated (1953 as amended), the court is vested with jurisdiction, at the time of divorce, to "make such orders in relation to . . .property . . .as may be equitable; . . ."

This statute has always been interpreted as permitting the Court, by Decree, to give the wife an interest in her husband's property, as well as permitting the division of property held in both names. (For an example, see Pinion v. Pinion, 92 U. 255, 67 P. 2d 265 (1937). "If her husband has property, and she would go forth penniless, the situation would merit a property division.")

In fact, one-third is usually considered a fair proportion to award the wife in such divisions although the Court has discretion to modify this percentage depending on the facts of each particular case. Woolley v. Woolley, 113 U. 391, 195 P. 2d 743 (1948), at page 745. (In the final divorce decree in the case at hand, the judge chose to go even further, granting a one-half undivided interest to the appellant.)

This apparent correlation between the wife's statutory right and property division rights at divorce is further enhanced by examining the purpose of each.

As to the wife's statutory interest, it has been said that the law favors the wife's statutory right and is tenacious in protecting this right in her husband's estate. Hilton v. Sloan, 37 U. 359, 108 P. 689 (1910), at page 696.

As stated in In Re Madsen's Estate, 123 U. 327, 259 P. 2d 595 (1953), at page 602:

> We recognize it to be the fact that the right of dower or its statutory equivalent has always been highly favored in the law. It is one of the most ancient of our principles, dating back into antiquity . . . The wife's sustenance is a matter of great concern. The purpose of the law is to assure proper support of the widow after the death of her husband.

The policy of the law granting property division to the wife upon divorce is substantially the same. In MacDonald v. MacDonald, 120 U. 573, 236 P. 2d 1066 (1951), the rule is stated that where there are sufficient assets and income to do so, a wife is entitled to be provided for according to her station in life and as demanded by her condition of health and lack of ability to work. The Utah Supreme Court reaffirmed this rule in Wilson v. Wilson, 5 U. 2d 79, 296 P. 2d 977 (1956) by stating it was the court's responsibility, in dividing property and awarding alimony in divorce judgment, "to endeavor to provide a just and equitable adjustment of parties' economic resources so that the parties can reconstruct their lives on a happy and useful basis."

The actions of the defendant, Mr. Hamilton, in selling the subject property to the respondents, Poulsens, before the final divorce decree was signed, frusturated the efforts of the court to accomplish this end.

In the case at hand, the Divorce Decree, as beteen the parties to it, awarded appellant a one-half undivided interest in the subject property, as a tenant in common,

Although the Decree is somewhat ambiguous as to whether joint tenancy or tenancy in common was intended, a fair construction of Section 57-1-6, Utah Code Annotated (1953 as amended) favors tenancy in common. In either event, the appellant's interest would be the equivalent of an undivided one-half interest. 156 A. L. R. 515, 516.

The wife's statutory right at the time of sale insured her a one-third interest in the property at that time. To allow the property to pass from the defendant, Robert Earl Hamilton, to the respondents, Poulsens, while ignoring both appellant's statutory right and the rights afforded her under the property division at divorce seems unjustly harsh.

It is submitted that the Court should hold that the appellant has at least a 33% interest in the property, representing the wife's statutory interest transmuted into a property division at divorce. This author has been unable to locate any cases on this point in Utah. In other states, the relationship between the wife's statutory interest and divorce awards can be summarized as taking two forms. Either 1) the wife's statutory interest after divorce, or 2) the wife's statutory interest by an award of lump-sum alimony, or some other provision. In either case, it is inferentially recognized that the two interests are related, and that the overriding concern of each is to provide for the wife. 25 Am Jur 2d 195, Dower and Curtesy § 147.

Defendants are really not prejudiced in any way be a holding that a property award in a divorce case perpetuates

a dower right included in it. If this divorce had not gone through, respondents would be holding the property subject to the one-third statutory interest in the wife. Why should they reap a windfall in ridding the property of this outstanding interest, just because a divorce subsequently occurred, to which they were not parties, and in which they had no interest?

C. Public policy dictates that the statutory interest of the wife be protected.

If respondents' position were adopted, it would open the door for fraud, and furnish a blueprint for husbands to cheat their wives out of their statutory interest. The spirit of vindictiveness which often accompanies divorces would insure that the loophole would be used. All the husband would have to do is to secretly sell all his real property and record the deed just prior to the issuance of the Divorce Decree. The Decree would cut off the wife's statutory interest, and the prior recorded deed would nullify any carefully considered property division which the judge had embodied in his Decree. As a result of this underhanded maneuver, the wife's property rights would be completely circumvented.

This would contravene the clear policy of Utah Statutes, Section 74-4-3, Utah Code Annotated (1953 as amended); Section 30-3-5, Utah Code Annotated (1953 as amended); and Section 74-1-1, Utah Code Annotated (1953 as amended), which is to protect the interest of the wife

and family, and to provide for them. At the trial, A. V. Hamilton, father of the defendant, Robert Hamilton, testified that he provided the money to buy the property in issue "for the benefit of the Hamilton family, for the wife and children." (Transcript, P. 7, lines 28 and 29). He put it in his son's name alone, on advice of counsel that the wife would have a statutory right and the family interest would therefore be protected. (Transcript, P. 8, lines 27-30 and P. 9, lines 1-4).

D. The inadequate consideration paid by the respondents for the subject property indicates a willingness by the respondents to take the property subject to the interests of the appellant.

The respondents Poulsens claim they paid for the land with $3,500.00 cash (D 4 : 21-23) and a truck and trailer which were 13 and 17 years old, purchased earlier by the Poulsens for $7,500.00, but which were valued for consideration purposes at $8,500.00! (Interrogatories, answers on February 16, 1972). At the trial on June 25, 1973, the appraiser Ken Esplin valued the real property at $38,000.00 plus. (T [1973] 18 : 11-15). Thus, even assuming the old truck and trailer to be worth what respondents claim, they still bought the property for only 30% of its true value.

Respondents Poulsen knew, prior to their purchase of the land from Robert Hamilton, that he had been married,

and even inquired as to the whereabouts of his wife. (D 6 l. 18). Hamilton told him he was divorced that his wife left and went to California. Poulsen testified that he told Hamilton "if he was still married, he couldn't sell the property." (D 11 l. 2). The matter was brought up again by Poulsen's accountant at the time of closing (D 13 l. 8). No contact was ever signed, and Poulsen made no effort to verify Hamilton's statement regarding the status of the divorce, though it would have been very easy to do so. (D 12). Under such circumstances, Poulsen should have been put on inquiry, and charged with notice of what inquiry at that time would have revealed, to-wit: that the seller was not divorced, that the land was still subject to the wife's statutory interest, and that the wife had asked the Court for a one-half interest in the property. The gross inadequacy of consideration, and the haste and informal nature of the sale all suggest that the Poulsens may have suspected the true state of affairs, and were willing to gamble on title for the low price they were paying.

E. Judicial acceptance of this transaction could encourage violation of the criminal code.

One other consideration which may be mentioned is that Section 76-20-10, Utah Code Annotated (1953 as amended) makes it a felony for a married man to falsely represent himself as unmarried, and under such representation, wilfully convey real estate in Utah without the consent of his wife,

when such consent is necessary to relinquish her inchoate statutory interest. If a husband is permitted, on the civil side of the law, to succeed in cutting off his wife's rights by doing this, it will only encourage more widespread violation of this criminal statute.

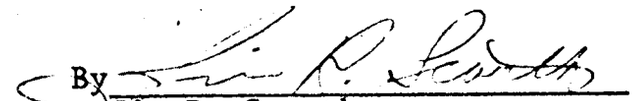
CONCLUSION

On the basis of the foregoing statutes and authorities, it is submitted that the Court should adopt a rule, which protects the family, by holding that:

(A) Under the circumstances of this case, respondents Poulsen were charged with notice of the then pending Hamilton divorce, and have taken title only to the interest that was subsequently awarded to Robert Hamilton, to-wit: an undivided one-half interest as a tenant in common.

(B) In the alternative, and should the Court not make the foregoing ruling, it is submitted the Court should find that the Defendants took title subject to appellant's interest of one-third, and that such interest has been converted by virtue of the divorce decree, pro tanto, into a one-third interest in the real property, with the right of appellant to recover the difference between said one-third and one-half (or one-sixth of the proceeds or reasonable market value of the property) from her husband, Robert Earl Hamilton.

RESPECTFULLY SUBMITTED,

By 
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